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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,508	05/11/2006	Jens Storkel	02894-741US1 06765	9353
26161	7590	03/23/2010	EXAMINER	
FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022				SPISICH, MARK
3727		ART UNIT		PAPER NUMBER
NOTIFICATION DATE		DELIVERY MODE		
03/23/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

Office Action Summary	Application No.	Applicant(s)	
	10/564,508	STORKEL ET AL.	
	Examiner	Art Unit	
	Mark Spisich	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 14 January 2010.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 19-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 19-39 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 14 January 2010 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ . | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Drawings

1. The new drawing sheet (with figure 6) was received on 14 January 2010. These drawings are approved.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipate by Clemens (USP 3,229,318). The patent to Clemens discloses a toothbrush (10) comprising a head (14) including a plurality of bristle clusters (24) wherein a first plurality of clusters are fixed in a depression(s) in the head (in the regions 20) and a second plurality of clusters are provided (in regions 18) which are not surrounded by a depression. With regard to claim 20, "adapted to substantially correspond" is very broad.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 19-29 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al (USP 5,687,446) in view of Clemens (USP 3,229,318). The patent to Chen discloses a brush head (14) as well as a plurality of bristle clusters (16) each inserted into a surface of the head and further includes a depression (22 as well as other shapes) associated with individual clusters. The patent to Chen discloses the invention substantially as claimed with the exception of including clusters within and the depressions as well as some that are not. The patent to Clemens discloses a toothbrush head (14) including a first group of clusters fixed in a depression (20) and a second group of clusters (18) which are not located in any of the depressions. The very broad combination as recited in claim 19 of the mere addition of at least one tuft/cluster not surrounded by a depression is reasonably taught by Clemens and would be obvious to one of skill to have provided such an additional cluster to the brush of Chen. The patent to Chen discloses the depressions (and tufts) with the major/minor axis and the patent to Clemens teaches the orientation of the depressions with the long axis oriented transverse to the handle longitudinal axis.

6. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al (USP 5,687,446) and Clemens (USP 3,229,318) as applied to claim 27 above, and further in view of WO 01/89344. The modification of the head of Chen as taught by '344 would be obvious to one of ordinary skill.

7. Claims 19-21 and 31-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al (USP 5,687,446) and Clemens (3,229,318), and further in view of Carlucci et al (USP 6,735,804). The patent to Chen (as modified by Clemens)

discloses the invention substantially as claimed with the exception of the round brush (intended to be used on a power toothbrush or oscillatory movement). The patent to Carlucci discloses a round brush head (40) a number of which have a generally rectangular cross-section. The provision of the depressions and tuft arrangement of Chen/Clemens would be obvious for a head of the type of Carlucci as well.

8. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO 01/89344 in view of Clemens (USP 3,229,318). '344 discloses a toothbrush comprising a head (1) with a slot (8) dividing the head into two halves (2,3) and further including a plurality of bristle clusters (5,7). '344 discloses the invention substantially as claimed with the exception of the depression(s). The patent to Clemens discloses a toothbrush head (14) including a plurality of depressions (20) in which bristle clusters (24) are fixed and further including additional bristle clusters (24) (the ones mounted in the regions 18 not surrounded by a depression. It would have been obvious to one of ordinary skill to have modified the head of '344 as such for the reasons set forth in the patent to Clemens (column 1, lines 7-12) and further because it is shown to be a known manner of arranging the bristle tufts/clusters of a toothbrush.

9. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fassler et al (USP 4,635,313) in view of Clemens (USP 3,229,318). The patent to Fassler teaches the first step of claim 39, wherein the bristle clusters (10) are molded over with a plastic material to form a plastic mass of head (figure 1D). Fassler fails only to disclose the depression(s). The forming of a depression (20) in a head (14) of a brush is taught by Clemens. Further, Clemens discloses that other clusters may be provided

which are not surrounded by a depression (regions 18). One of ordinary skill would deem it obvious to provide such a tuft/cluster arrangement to the head of Fassler for the same reason set for previously.

Response to Amendment

10. Applicant deliberately (and significantly) broadened the claim(s) that were previously allowed, totally leaving out all of the intervening claims as well as the entirety of original claim 25. The presentation of the amended claim 19 caused the examiner to take a second look at the patent to Clemens, and as the result has withdrawn the allowability indicated in the prior office action.

Allowable Subject Matter

11. The following claim drafted by the examiner and considered to distinguish patentably over the art of record in this application, is presented to applicant for consideration:

A toothbrush comprising:
a brush head having first and second ends and peripheral edge regions extending therebetween;
bristle clusters protruding from a cleaning surface of the brush head;
a depression disposed in the surface a surrounding a respective one of the bristle clusters, the depression having a bottom into which the bristle cluster penetrates and in which the bristle cluster is fixed, the depression defined by a pair of longer side walls and a shorter end wall and wherein the shorter end wall is disposed inward on the

surface of the head from the peripheral edge and the end of the depression opposite the shorter end wall is open and extends fully to the peripheral edge of the head; and
wherein the bristle clusters include at least one bristle cluster not surrounded by a depression.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Spisich whose telephone number is (571) 272-1278. The examiner can normally be reached on M-Th (5:30-3:00), Alternate Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica Carter can be reached on (571) 272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mark Spisich/
Primary Examiner, Art Unit 3727

Mark Spisich
Primary Examiner
Art Unit 3727

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/M. S./
Primary Examiner, Art Unit 3727